Congressman Maurice Hinchey's

Agenda
on
Corporate Responsibility

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Investors' and Employees'
BILL OF RIGHTS

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I. Imposing Tough Criminal Penalties on Corrupt CEOs

- **Imposing Tough Criminal Penalties for Securities Fraud.** Hinchey supports creating a new 10-year felony for defrauding shareholders of publicly traded companies. This provision would be more accessible to investigators and prosecutors and would provided needed enforcement flexibility and protection against all the various types of schemes and frauds which inventive criminals may devise in the future to defraud shareholders in publicly traded companies.

- **Imposing Criminal Penalties for Altering, Destroying or Failing to Maintain Documents.** Hinchey and House Democrats have proposed providing two new criminal statutes which would clarify and plug holes in the current criminal laws relating to the destruction and fabrication of evidence, including the shredding of financial and audit records. First, this measure would create a new five-year felony, which could be effectively used in a wide array of cases where a person destroys evidence with the specific intent to obstruct a federal agency or a criminal investigation. Second, it also creates another five-year felony that applies specifically to the willful failure to preserve audit papers of companies that issue securities.

- **Protecting Whistleblowers.** Hinchey supports providing whistleblower protection to employees of publicly traded companies, similar to those currently available to most government employees. The Democratic plan would specifically protect employees when they take lawful acts to disclose information or otherwise assist criminal investigators, federal regulators, Congress, supervisors (or other proper people within a corporation), or parties in a judicial proceeding in detecting and stopping fraud.

II. Stopping Off Shore Tax Havens

- **Ending Corporate Tax Havens.** A growing number of American companies, encouraged by their financial advisers, are incorporating in Bermuda to lower their taxes -- without giving up the benefits of doing business in the United States. Hinchey supports and has voted for a proposal to prevent corporations from evading the U.S. income tax by reincorporating in a foreign country.

- **Making Sure CEOS Pay Their Fair Share When Companies Reincorporate Overseas.** Hinchey and congressional Democrats have proposed to make corporate executives of companies that reincorporate outside the United States pay their fair share in taxes. When a corporation moves overseas to avoid taxes, shareholders of that corporation are required to pay capital gains tax on the exchange of their stock of the old corporation for stock in the new corporation (even though they did not sell their stock). However, corporate executives are <u>not</u> required to recognize gains on their own <u>stock options</u>. This proposal would require corporate executives to pay capital gains taxes on their stock options when the corporation moves overseas, just as other investors are required to do on their stocks.

III. Making Executives Accountable

- **Holding CEOs Accountable for Honest Bookkeeping.** One proposal that Hinchey supports would require CEOs to personally vouch for the integrity and accuracy of their firms' financial statements, and impose stiff criminal penalties for lying in those documents. In addition, CEOs would lose their stock bonuses and incentive-based forms of compensation when they mislead the public in these financial statements or engage in similar misconduct.

- **Ensuring CEOs don't Profit While Workers Lose.** Under current law, corporate executives are able to protect their own retirement benefits even in cases where the company stock in employee 401(k) plans becomes worthless. Hinchey and House Democrats have proposed taxing the deferred compensation benefits of corporate executives if those executive benefits are protected in the case of bankruptcy or financial distress of the employer.

- **Helping Limit Golden Parachutes When Companies Fail.** In cases where departing executives receive golden parachutes while leaving behind plummeting shareholder value or companies in bankruptcy. The Democratic plan calls for an excise tax on the severance package. There have been several recent cases where executives of large corporations resigned and received large severance packages and retirement benefits even though the shareholders of the corporations were left holding stock that was virtually worthless.

- **Stopping the Subsidy for Greedy CEOs.** Corporations should only be able to deduct CEO bonuses for real improvements in business operations -- not fictitious improvements. Hinchey has voted for a proposal that modifies that current tax deduction for executive compensation. This proposal prevents firms from deducting executive compensation if it is obtained through manipulation of the company pension funds. Corporate executives should not be rewarded for cutting employees' pension benefits (through the conversion to a less costly pension plan), or from using unrealistic rates of return under the pension plan.

- **Banning CEOs who Commit Wrongdoing from Moving Company to Company.** Hinchey supports empowering the Securities and Exchange Commission (SEC) to bar corporate CEOs and directors who are guilty of wrongdoing from serving as corporate officers or directors at other companies.

- **Banning CEOs from Receiving Insider Company Loans.** Democrats propose legislation to prohibit executives and members of corporate Boards of Directors from receiving insider company loans. These transactions are nothing less than corporate giveaways masquerading as loans, harming the corporation, its employees and investors by draining valuable assets. WorldCom, which hid an astonishing $3.8 billion in corporate expenses from investors and employees, gave chief executive Bernard Ebbers insider company loans of more than $340 million.

IV. Assuring the Integrity of Wall Street and Restoring Faith in the Markets

- **Requiring Corporations to Provide Investors with Honest Information.** Hinchey supports protecting and informing investors and employees by requiring companies to promptly disclose reliable financial data, known earnings trends, and emerging factors that may change prior earnings forecasts. Democrats have championed this proposal that is designed to reassure investors by requiring that timely, accurate information on profits be disclosed to shareholders.

- **Disclosing Insider Relationships.** Democrats have proposed legislation that would require that the SEC ensure disclosure of relationships between the firm or its executives with any non-profit on whose board a director or family member serves, including disclosure of contributions between corporate officers and non-profits involving more than $100,000.

- **Disclosing Insider Transactions.** This proposal requires that stock and derivatives sales by CEOs and other corporate officers be promptly reported on the same day.

V. Strengthening Auditor Independence and Industry Oversight

- **Ensuring that Audits are Independent.** To ensure that audits are objective in certifying companies' financial reports, Hinchey and congressional Democrats support prohibiting auditors from performing other non-audit services for their clients that create conflicts of interest, including consulting or financial reporting systems. We must ensure that accounting firms are providing objective audits for the public. This cannot be done if they are making millions in consulting fees from the same companies they are auditing.

- **Expanding SEC Resources.** Hinchey supports doubling funding and staff for the enforcement, accounting and corporate finance divisions of the SEC, and fully funding pay parity for SEC staff. This proposal would double the agency's authorization to $876 million in the 2003 fiscal year.

- **Establishing Public Auditing Regulatory Board.** This proposal ends self-policing of the accounting profession by creating a regulatory board with sweeping investigative and disciplinary powers over audit firms, subject to SEC review. Public Board members would be nominated by groups representing shareholders, institutional investors and pension fund beneficiaries and future retirees, and would be appointed by the SEC.

- **Requiring Better Corporate Governance.** Democrats seek to put into law the proposals of the New York Stock Exchange Blue Ribbon Panel to reform corporate governance procedures and demand greater accountability from officers and independent directors. There is an urgent need for an overhaul of the ways in which audit committees and boards of directors operate as a check on management. The NYSE Committee recommendations would enhance the authority of independent directors and audit committees, strengthen the definition for independent directors, and require shareholder approval of all equity-based compensation.

V. Strengthening Auditor Independence and Industry Oversight (continued)

- **Ending Stock Analysts' Conflicts of Interest.** Hinchey and House Democrats also propose legislation to ensure that stock analysts are independent and objective, by severing the link between compensation for analysts and investment bankers. Hinchey supports a prohibition of analysts from holding stock in the companies that they cover; the disclosure in research reports of whether securities firms have received or are entitled to receive any compensation from a covered company over the past year; enhanced disclosure requirements on potential conflicts; and the creation of a new compensation regime for analysts in which they will be rewarded based on the quality of their research. It is clear that in a number cases, Wall Street investment advice was fundamentally compromised by conflicts of interest, in which securities analysts touted stocks that they did not believe in, often in exchange for lucrative investment banking fees and rich compensation packages.

VI. Enhancing Pension Protection for Employees

- **Giving Employees Control over Pensions.** Hinchey proposes giving employees the information and control they need to protect their pensions. Specifically, Democrats propose to permit employees to sell company stock after three years of participating in the plan, and provide worker representation on boards of pension plans.

- **Ensuring Better Information for Employees about Pensions.** Hinchey has voted to prohibit employers or plan administrators from making any misleading statements on the value of employer stock or other pension investment plans. Further, in light of the plight of employees at Enron, Democrats would require immediate information about executives selling company stock, and advanced notification of employee "lock out" periods. As you may remember, employees were prohibited from selling their Enron stock while executives continued to dump their own.

- **Restoring Pension Fairness Between Rank-and-File Workers and Management.** Hinchey and congressional Democrats support modifying the pension rules to ensure a minimum benefit for rank-and-file employees participating in a top-heavy pension plan. This change would ensure that workers are entitled to a minimum benefit equal to at least three percent of compensation in a qualified pension plan where key employees (generally executives and owners) get more than 60 percent of the benefits. In April, House Republicans passed legislation, which Hinchey strongly opposed, that would scale back current rules requiring pension plans to meet very specific tests for the balance between benefits for lower paid and higher paid workers to get favorable tax treatment. Democrats want to overturn this provision to ensure fairness between workers and management.

The Fox Guarding the Henhouse: The Republican Record on Corporate Responsibility

In recent months we have learned more about the ties between the Bush Administration and the corporations that have engaged in abuses that cost thousands of employees their jobs and millions of Americans their retirement savings and economic security. Speculation abounds about President Bush's stock trades as a board member at Harken Energy, including questionable loans that were made to him, but speculation is not limited to the president. Indeed, Halliburton Co. is under investigation by the Securities and Exchange Commission (SEC) for its accounting practices during Vice President Cheney's tenure as CEO, Secretary of the Army Thomas White is a former high-ranking Enron executive who made a "golden parachute" exit from the corporation as it was sliding into bankruptcy, and the Bush-appointed chairman of the SEC -- our chief national watchdog against fraud and abuse -- was a lobbyist for the tainted accounting firms.

While Republicans try to deny their connections to the corporations that have defrauded the American public, the legislative record is undeniable. The Republican Congress and Republican leadership in the White House created a legal and regulatory climate that has so far resulted in thousands of Americans losing their hard earned savings and a crisis of confidence in our markets.

Private Securities Litigation Reform Act, 1995

Part of the GOP's "Contract with America," the bill shielded CEOs from liability for making dubious financial projections, and reduced the potential liability of defendants, such as accountants, in securities fraud suits. In effect, it reduced the incentives against committing fraud by making it more difficult for victims to get into court, to maintain a case once there and to collect full damages even if they win. The bill, which Hinchey strongly opposed, was passed over President Clinton's veto. (House passage, 3/8/95: 325-99; Conference report passage, 12/5/95: 320-102; Veto override, 12/20/95: 319-100. Hinchey voted no on all three.)

Repeal of the Corporate AMT, 1995

The first budget proposed by the new Republican Congress in 1995 included more than $282 billion in corporate giveaways. Among these, the bill contained a repeal of the corporate Alternative Minimum Tax, which was enacted in 1986 to ensure that corporations paid at least some tax on profits. The bill also gave businesses huge write offs for depreciation that permitted them to deduct more than the cost of their capital investments. The same budget package also allowed corporations to raid their workers' pension funds. Fortunately, President Clinton vetoed the GOP tax package. (H.R. 2492, 10/26/95: 227-203, Hinchey voted no.)

SEC Staff Scaled Back While Demand for Enforcement Grows, 1995-2000

From 1995-2000, Republicans in the House annually passed appropriations bills that cut the SEC budget below President Clinton's requests -- including a 1996 cut of 13 percent. At the same time, the business activity that the SEC was charged with monitoring was growing at a record pace. For example, total trading volume for 2000 was more than three-and-a-half times the volume in 1995. As the General Accounting Office noted in a recent report, "the SEC's workload and staffing imbalances have challenged the agency's ability to protect investors and maintain the integrity of securities markets." In each of the last two years, President Bush has rejected efforts to add enforcement staff and equalize SEC regulators' salaries with other government financial regulators. The GAO has reported that the inequity of SEC salaries is one of leading reasons why the agency is stretched so thin. For the 2002 fiscal year, President Bush called for the elimination of 57 staff positions at the SEC, which would only further compromise the agency's ability to enforce the laws we have now.

GOP Congress Rejects Clinton Administration's Proposed Accounting Standards, 2000

In the spring of 2000, Securities and Exchange Commission Chairman Arthur Levitt announced plans to propose new auditor independence standards to eliminate the inherent conflicts of interest from accounting firms being paid to provide both auditing and consulting services to the same corporation. Levitt announced these plans because, in the late 1990s, consulting had become the main profit center for the accounting industry. Levitt backed off in response to tremendous pressure from the Republican-led Congress, including threats of retaliation against the agency, from leaders of key House committees. In all, press reports indicated that a total of 48 members of Congress wrote to Levitt in opposition. The lobbying effort against Levitt's proposal was led by Harvey Pitt, then an accounting industry lobbyist and now the SEC chairman in the Bush Administration.

Retirement Security and Savings Act, 2000

H.R. 1102 contained the most comprehensive set of changes to the tax treatment of private pensions in a decade, including an increase in the contribution limit to 401(k) plans from $10,000 per year to $15,000 per year, faster vesting in defined contribution plans, and an increase in the portability of private pension plans between employers. The legislation also weakened existing pension rules that required that employees receive the same benefit relative to pay, so that high paid executives could not receive a disproportionate share of the pension plan. Hinchey strongly opposed the bill because it failed to address the unfair treatment of older workers when corporations convert from a defined benefit pension plan to a cash balance plan. Hinchey also opposed the bill for skewing its benefits toward the highest income workers while weakening protections for lower income employees. He voted for a Democratic substitute that provided tax credits for small businesses to set up pension plans and addressed the flaws in the Republican bill that gave the greatest tax incentives to high-income people. (Democratic substitute, 7/19/00: 185-239, Hinchey voted yes. Passage, 7/19/00: 401-25, Hinchey voted no.)

GOP Leaders Oppose Clinton on Offshore Tax Haven Regulations, 2000
President Clinton joined the efforts of other developed economies around the world to stop corporations from fleeing to low-tax havens. The Organization for Economic Cooperation and Development (OECD) project called for information sharing among its members about the use of tax haven countries by corporations, called for increased transparency in national banking and greater cooperation in drug and tax-related investigations. Every year, the U.S. loses an estimated $70 billion in legitimate U.S. taxes to offshore havens. Majority Leader Dick Armey and Majority Whip DeLay blasted the plan in a letter to the Clinton Administration. Of course we now know that Enron set up 900 dummy subsidiaries in foreign tax havens.

Retirement Security Advice Act, 2000
The House enacted H.R. 2269 in direct response to the Enron collapse, after longtime employees lost their entire retirement savings because it invested exclusively in now-worthless Enron stock. Instead of requiring that companies offer independent advice to workers, as Hinchey and House Democrats advocated, the bill would amend existing conflict of interest laws so that the same financial services companies that are offering investment vehicles to the workers could also offer investment advice. This would permit insurance companies, banks, brokerages and mutual fund companies to offer advice about their own products. Hinchey opposed the bill for this reason, and supported a Democratic substitute that would ensure that workers could get financial advice from qualified independent sources. (Democratic substitute, 11/15/01: 180-243, Hinchey voted yes. Passage, 11/15/01: 280-144, Hinchey voted no.)

Corporate Auditor Accountability Act, 2002
H.R. 3763, crafted by House Republicans with the support of the Bush Administration, was supposed to be Republicans' comprehensive response to the accounting scandals. Instead, it represented cosmetic reform that will not correct the systemic flaws in the financial reporting system. Hinchey voted for a tough Democratic substitute that holds CEOs and other corporate managers accountable for the accuracy of their firms' financial statements; empowers the SEC to bar guilty officers from serving at other publicly held companies; ends self-policing of the auditing industry by creating a powerful independent regulatory board; and ensures that stock analysts are independent and objective by barring them from holding stock in the companies they cover and prohibiting their pay from being based on their firm's investment banking revenue. The Republican bill actually makes it harder to bar guilty executives from serving at other firms; essentially lets the accounting industry continue to police itself; fails to place any new limits on consultant services; and fails to include tough regulations to address analysts' conflicts of interest. (Democratic substitute, 4/24/02: 202-219, Hinchey voted yes. Passage, 4/24/02: 334-90, Hinchey voted no.)

Corporate Fraud and Accountability Act, 2002
Its proponents described H.R. 5118 as a measure to punish corporate wrongdoers, but this was merely another cosmetic effort by House Republicans. It did not include critical provisions, supported by Hinchey, which would: require auditors to maintain all audit or work papers for five years after an audit; extend the statute of limitations governing private securities claims; extend whistleblower protections to corporate employees to protect them from retaliation if they report corporate misconduct; and increase penalties when securities fraud endangers the solvency of a corporation. The Republican leadership would not allow Democrats the opportunity to amend the bill to makes these changes and strengthen the protections for investors. (Passage, 7/16/02: 391-28, Hinchey voted no.)

Corporate Patriot Enforcement Act, 2002
In March, Reps. Richard Neal (D-MA) and Jim Maloney (D-CT) introduced legislation that would stop corporations from re-incorporating in offshore tax havens to avoid paying U.S. income taxes. Hinchey is an original cosponsor of the bill. So far, the Republican leadership has refused to allow a vote on the bill on the House floor, despite the fact that it has the support of 121 members. Republicans have also refused to allow a floor vote on a Democratic amendment to an appropriations bill that would ban payments under federal contracts to subsidiaries of publicly traded U.S. corporations that are incorporated in tax haven countries.